

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
Writ Appeal No.685 of 2007

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Between:

Mohd. Murtuza Ali Khan

... Appellant

And

Administrator, Quli Qutub Shah Urban
Development Authority, Hyderabad and others

... Respondents

Counsel for the appellant: Shri G. Anjappa

Counsel for respondent Nos.2, 4
& 5:

Government Pleader for
Revenue

Counsel for respondent No.3: Shri R. Ramachandra Reddy

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::JUDGMENT::

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September 19, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 12.2.2007
passed by the learned Single Judge in Writ Petition No.18323 of

1994 whereby she rejected the appellant's prayer for issue of a mandamus to the respondents to pay Rs.2,000/- per square yard for land measuring 1041 sq. yds., which was utilized for construction of causeway on Musi River by Quli Qutub Shah Urban Development Authority.

In the affidavit filed by him in support of the writ petition, the appellant pleaded that he is the owner in possession of lands measuring Ac.3-22 guntas comprised in Survey Numbers 214, 222 and 223 of Village Malakpet; that Municipal Corporation of Hyderabad (for short, 'the Corporation') took possession of about 2000 sq. yds. of his land without complying with the provisions of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') and handed over the same to Quli Qutub Shah Urban Development Authority for construction of causeway on Musi River; that the latter constructed the causeway and he was paid only a sum of Rs.1,76,000/- by way of compensation in respect of 1041 sq. yds. of land @ Rs.169/- per sq. yd. The appellant claimed that he received the amount of compensation under oral protest and, therefore, the respondents be directed to pay the prevailing market value @ Rs.2,000/- per sq. yd.

Paragraphs 6, 7 and 8 of the appellant's affidavit read as under:

6. That the respondents neither acquired the land under Land Acquisition Act nor under any other provisions of any statute, nor did they obtain my permission for taking possession of land. They claimed that the land belongs to government and I was nobody to object the laying of causeway through the land.

7. That ultimately the respondents admitted my ownership and possession of the land in view of the judgment of Board of Revenue in respect of the said lands which is filed herewith and paid me an amount of Rs.1,76,000/- by way of compensation of land of a total area of 1041 sq. yards at the rate of Rs.169/- sq. yard being part payment. I received the said amount as an initial payment of part of compensation under oral protest on.

8. I further submit that the respondents have not followed any

procedure prescribed by any statute or rules framed under any Act. They have arbitrarily taken possession of the land by force by evicting some of the occupants who were living there having constructed their huts on my behalf and with my permission.

Along with the writ affidavit, the petitioner filed xerox copy of letter No.2163/D/93, dated 8.3.1994 sent to him by Chief Planning Officer, Quli Qutub Shah Urban Development Authority, Darul Shifa, Hyderabad requiring him to furnish a copy of the survey plan showing the area affected by the proposed 60 ft. wide road i.e. high level causeway for payment of compensation and the sketch of the land.

In the counter filed by him, Shri B.R. Madan Mohan, the then Secretary of Quli Qutub Shah Urban Development Authority, averred that the land of the petitioner was utilized with his consent for construction of causeway and he was paid compensation @ Rs.169/- per sq. yd. He further averred that the petitioner agreed to accept compensation at the rate fixed by the State Government and then only his land was utilized for construction of the causeway.

The petitioner filed reply to the counter affidavit of respondent No.1 in the form of affidavit dated 9.10.2002. He claimed that the respondents obtained his consent by exerting pressure, holding out threat, playing fraud and exercising undue influence and coercion and that his signatures were obtained on blank papers and printed forms without his knowledge and consent. Paragraphs 3 to 6 of that affidavit read as under:

3. In reply to the allegations made in para 4 of the counter affidavit, it is submitted that the allegations that the Municipal Corporation of Hyderabad had taken possession of the land belonging to me is not disputed but the same was obtained without my consent and without my knowledge and the same was handed over to respondent No.1, and the 2nd respondent had commenced the construction work on my land without my consent and I protested the said action of the respondent. The said fact is

explained in my affidavit (para 6) in support of my W.P.

4. In reply to the allegations made in para 5 of the counter affidavit, it is submitted that the respondents have put me under pressure stating that the land (S.No.214, 222 and 223 of Chaderghat Village, Hyderabad) belongs to the Government and under the said pressure and threat they obtained my consent letter along with my title deeds, sketch etc. The said consent was obtained from me fraudulently on behalf of respondent No.1 by exercising undue influence and coercion over me and the same is not binding upon me. The said consent is illegal. Assuming for the sake of arguments that the said consent is validly obtained from me, it is submitted that it is only with regard to acquiring the land for public purposes viz., for laying the causeway through my land.

5. In reply to the allegations made in para 6 of the counter affidavit, it is submitted that the said allegations are not correct. It is submitted that I have always been informed by respondent No.1, that the Land Acquisition proceedings would be initiated and I would be paid compensation according to the market value. It is not correct to state that there was any negotiation for settling the price. I never agreed to receive Rs.169/- per sq. yard to my land. It may be the opinion of the Principal Secretary to Govt., R & B Dept., but the same is not binding upon me. The law requires that unless and until the proceedings are initiated under the Land Acquisition Act, 1894, it shall not be lawful for any officer to enter upon and survey and take levels of any of my land. The proposed opinion expressed by the said Principal Secretary to the Govt. is contrary to law and the same is illegal. The allegation that I gave my consent agreeing not to refer the matter to the Collector for initiating the acquisition proceedings under Land Acquisition Act is not correct and the same is denied. I never gave any such consent as alleged in para 6 of the counter affidavit.

6. In reply to the allegations made in para 7 of the counter affidavit, it is submitted that I was paid Rs.1,76,000/- towards the part-payment of the compensation in anticipation of initiating the Land Acquisition proceedings and paying the compensation according to law. It is not correct to state that the land that was taken possession of was 1042.11 sq. yds. but it is 2000 sq. yds. There was no such indemnify bonde that was obtained from me. The respondents had paid me the said money to me after obtaining my signatures on several blank papers and the printed forms without my knowledge and consent and the same is not binding upon me.

In a separate counter-affidavit filed on 15.11.2003,

Shri Mohd. Khalid Sarwar, Assistant City Planner, Circle-I, Municipal Corporation of Hyderabad averred that for the purpose of acquiring the petitioner's land for construction of causeway, the high level meeting was held on 29.6.1994 in the chamber of Principal Secretary to Government and in that meeting, the petitioner agreed to receive the compensation @ Rs.169/- per square yard. Accordingly, he was paid a sum of Rs.1,76,000/- in respect of 1041 sq. yds. of land. He denied the petitioner's assertion regarding acceptance of compensation under protest. Paragraphs 3 and 4 of the affidavit of Shri Mohd. Khalid Sarwar read as under:

3. In reply to paras 4 to 7 of the affidavit, I submit that I submit that for construction of the Causeway and to connect the said causeway to the main road it has to go from the land in question and in that process an extent of 1041.11 sq. yards of site was required by the first respondent. I submit that for the purpose of acquiring that land a High-Level meeting was held on 29.6.1994 in the chambers of Principal Secretary to Government and in that meeting the petitioner agreed to receive the compensation fixed by the first respondent @ Rs.169/- per sq. yard for which the petitioner also agreed to receive the same and full and final compensation for the affected land specifically considering that the said land was claimed as Government land as evident from the entries in the T.S.L.R. Accordingly, the first respondent also paid an amount of Rs.1,76,000/- towards compensation. The petitioner received the same before acquiring the said land. The first respondent also obtained specific consent from the petitioner in which the petitioner agreed to receive the compensation @ Rs.169/- per sq. yard for the affect land. I submit the allegation that the first respondent and this respondent acquired the land about 2000 sq. yards but not 1041 sq. yards as false and hereby denied. The petitioner failed to make any protest with regard to extent or the compensation prior to filing of this writ petition. The allegation that the respondents failed to acquire the land under Land Acquisition Act or any act under the statute is false. I submit that as the first respondent specifically obtained the consent of the owner as required under Section 146 of Hyderabad Municipal Corporation Act, either this respondent or first respondent need not follow the Land Acquisition Act for acquiring the said land. I submit that the petitioner having received the compensation without there being any protest either with regard to compensation or with regard to extent, he is not entitled to seek relief under Article 226 of the Constitution of India and the allegation that the petitioner

orally protested is false and hereby denied.

4. In reply to paras 8 to 14 of the affidavit, I submit that the respondents strictly followed the procedure prescribed by the Hyderabad Municipal Corporation Act and not taken any piece of land of the petitioner high handedly as alleged by the petitioner. I submit that it is true that some hut dwellers were residing in the affected portion and the first respondent also obtained their consent and they were also rehabilitated by providing alternative sites. The allegation that the petitioner was not given opportunity to claim or establish his claim about the rate of the land is also false. I submit that the respondent people convinced the petitioner about the public purpose for which the land is being used and having convinced the petitioner agreed to receive the compensation @ Rs.169/- per sq. yard and he also received the compensation without any protest, is now not entitled to claim that the respondents has to follow Land Acquisition proceedings. I submit that the allegation that the affected area is 2000 sq. yards but not 1041 sq. yards is also false. It is only 1041.11 sq. yards which was affected for which the first respondent also paid compensation as per rates. Further, the petitioner is not entitled to agitate with regard to factual disputes by way of writ petition. I submit that the petitioner is not entitled for any relief as prayed for in the writ petition as he has already received the compensation as agreed by him by giving his consent letter to the first respondent. I submit that the petitioner having admitted that some persons are residing in the said site by raising huts, the property will attract Urban Land Ceiling Act and he is not entitled to keep more than 1000 sq. meters. I submit that the writ petition filed by the petitioner is misconceived and the same is liable to be dismissed.

The learned Single Judge noted that in terms of Section 146 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the 1955 Act'), immovable property can be acquired by the Corporation by agreement. She referred to the judgments of the Supreme Court and of this Court in **Bhikraj v. Union of India**^[1], **Jilubhai Nanbhai Khachar v. State of Gujarat**^[2], **Special Deputy Collector v. Kurra Sambasiva Rao**^[3], **Rev. Divn. Officer, Guntur v. Vasireddy**^[4], **Ushodaya Publications v. Commissioner, M.C.H**^[5], and also of

the Karnataka High Court in **Hindustan Aeronautics Ltd., Bangalore v. Muniswamy Reddy**^[6] on which reliance was placed by the learned counsel for the writ petitioner and held that the same are distinguishable on facts. The learned Single Judge then took cognizance of the averment contained in the counter affidavits filed on behalf of the respondents and dismissed the writ petition by recording the following observations:

As noted above, the specific version of the respondents is that the petitioner himself has agreed for payment at the rate of Rs.169/- per sq. yard. Such acquisition under Section 146 of the Hyderabad Municipal Corporation Act, 1955 is permissible by paying compensation through negotiations. The initiation of proceedings under the Land Acquisition Act is necessary only in the event of failure of negotiations under Section 146 of the Hyderabad Municipal Corporation Act, 1955. In the case on hand, admittedly the petitioner received a sum of Rs.1,76,000/- at the rate of Rs.169/- per sq. yard.

The procedure adopted by the respondents in terms of Section 146 of the Hyderabad Municipal Corporation Act, 1955 cannot be held to be either arbitrary or without jurisdiction. The further contention raised by the petitioner as to the extent of the land being purely disputed question of fact cannot be enquired into under Article 226 of the Constitution of India.

For the aforesaid reasons, no Writ of Mandamus can be issued compelling the respondents to initiate the proceedings under the Land Acquisition Act and pay compensation as claimed by the petitioner.

Before proceeding further, we may mention that by an order passed on 17-9-2007 in WAMP.No.1513 of 2007, the appellant was granted leave to amend paragraph 8(a) of his original affidavit. The amended paragraph 8(a) reads as under:

Para 8 (a): In para 4 to 8 of my affidavit in support of Writ Petition No.18323 of 1994, I stated that the respondents at first threatened me stating that the said land belongs to the Government and I am no way concerned with it. I submit that to prove my case, I was called upon by respondent No.1 orally to produce the documents. This had happened sometime in January 1994. I immediately produced the relevant documents in support of my case before respondent No.1 and respondent No.1, after being satisfied with my title and ownership and the possession

of the land, had called upon me through their letter No.2183/D/93 dated 8-3-1994 to demarcate my affected land in Survey Map (a copy of the said letter dt.8-3-1994 is filed herewith). I submit that in compliance thereof, I got surveyed my lands and submitted a sketch plan showing the affected portion of my land. I am herewith filing a Photostat copy of the said sketch plan which was delivered in the office of respondent No.1 personally in the first week of April 1994. It is submitted that respondent No.1 finally called upon me to his office under his oral instructions in the 2nd week of July, 1994 and obtained my signatures on several papers forcibly and promised me to pay compensation as per law and as per market value and delivered a cheque No.007765 dt.14-7-1994 for Rs.1,76,843-00 in my favour on the same day i.e. 14-7-1994 and promised me to pay the balance of the compensation as per market value soon thereafter. I submit that I received the said cheque from respondent No.1 on 14-7-1994 under oral protest. It is submitted that the respondents had dodged the issue of payment of balance of compensation on some ground or the other for sometime i.e. from July, 1994 to September 1994 and thereafter in the 1st week of October, 1994, the respondents forcibly commenced the construction of road work through my land. Under these compelling circumstances, I filed the writ petition immediately in the 1st week of October, 1994 i.e. 6-10-1994 along with a stay petition (W.P.No.18323 of 1994 and W.P.M.P.No.22505 of 1994).

Shri G. Anjappa, learned counsel for the appellant vehemently argued that the finding recorded by the learned Single Judge about the consent given by his client for utilization of the land for construction of causeway is perverse inasmuch as the same is based on misreading of the pleadings. Learned counsel emphasized that the appellant had accepted compensation by lodging oral protest and, therefore, the view taken by the learned Single Judge on the issue of his locus to seek market value of the land is erroneous and the order under challenge is liable to be set aside. An alternative submission made by the learned counsel is that the so-called consent of the appellant was obtained by playing fraud and exercising coercion and undue influence and, therefore, the same cannot be made basis for recording a finding that he had agreed to

the acquisition of land by payment of compensation @ Rs.169/- per square yard.

We have given serious thought to the entire matter. The proposition of law laid down in the judgments of the Supreme Court and this Court to which reference has been made hereinabove that a person cannot be deprived of his property without taking recourse to compulsory acquisition is unexceptionable, but the same does not have any bearing on the decision of this appeal. Section 146 of the 1955 Act, which postulates acquisition of immovable property by agreement, reads as under:

“146. Acquisition of immovable property by agreement:- (1)

Whenever it is provided by this Act that the Commissioner may acquire, or whenever it is necessary or expedient for any purpose of this Act that the Commissioner shall acquire, any immovable property, such property may be acquired by the Commissioner on behalf of the Corporation by agreement on such terms at such rates or prices not exceeding such maximum as shall be approved by the Standing Committee, either generally for any class of cases or specially in a particular case.

(2) And whenever, under any provision of this Act, the Commissioner is authorized to agree to pay the whole or any portion of the expenses of acquiring any immovable property, he shall do so on such terms and at rates or prices not exceeding such maximum as shall be approved by the Standing Committee as aforesaid.

(3) Subject to the provisions of this Act, it shall be lawful for the Commissioner on behalf of Corporation to agree with the owner of any land or of any interest in land needed by the Corporation for the purposes of any Scheme under Chapter XII or with the owner of any right which may have been created by legislative enactment over any street forming part of the land so needed, for the purchase of such land or for compensating the owner of any such right in respect of any deprivation thereof or interference therewith.

(4) No contract for the acquisition of any immovable property or of any interest therein or any right thereto or the payment of any compensation under sub-sections (1), (2) or (3) shall be valid, if the price or compensation to be paid for such property or interest or right exceeds rupees five thousand unless and until such contract has been approved by the Corporation.

(5) Every contract or other instrument relating to the acquisition of

immovable property or any interest therein or any right thereto shall be executed by Commissioner, shall have the common seal of the Corporation affixed thereto in the presence of two officers nominated by the Commissioner and shall also have the signature of the said two members, in the manner provided in Section 125.

(6) No contract for the acquisition of immovable property or any interest therein or any right thereto not executed as provided in sub-section (4) shall be binding on the Corporation.

(7) The foregoing provisions of this section which apply to an original contract relating to the acquisition of immovable property, or any interest therein, or any right thereto, shall be deemed to apply also to any variation or discharge of such contract.

An analysis of the above reproduced provision makes it clear that the Corporation can acquire the immovable property by agreement on payment of compensation at the rate approved by the Standing Committee.

In the light of the above, it is to be seen whether the finding recorded by the learned Single Judge that the appellant had consented for utilization of a portion of his land for construction of the causeway on River Musi is vitiated by an error of law.

A careful analysis of the affidavits filed by the parties show that the appellant had taken contradictory stand. In paragraphs 6 and 7 of the affidavit filed along with the writ petition on 9.10.1994, the appellant pleaded that the respondents neither acquired the land under the 1894 Act or any other statute nor did they obtain his permission for taking possession of the land and that he accepted compensation under oral protest. This shows that he had come up with a specific case that the respondents utilized his land for construction of the causeway without obtaining his consent and without resorting to the acquisition proceedings. In the counter-affidavits filed on behalf of respondent Nos.1 and 3 it was specifically pleaded that the petitioner (the appellant herein) had given consent for utilization of his land for construction of causeway and that he

accepted compensation @ Rs.169/- per square yard without any objection. In the rejoinder affidavit and the amended paragraph 8(a), the appellant set up an altogether new case. He alleged that the concerned authorities have played fraud, used undue influence and coerced him to part with possession of the land and that he was forced to sign papers relating to consent. This means that he had given up the original stance that the land was utilized without his consent. It is a different thing that while admitting the factum of his having given consent, the appellant also pleaded that his consent was obtained by fraud and exercise of undue influence and coercion.

In our opinion, once the appellant admitted the fact that the respondents had utilized the land with his consent, the burden to prove that the consent was obtained by playing fraud or exercise of undue influence and coercion was on him. However, the petitioner (the appellant herein) did not produce any evidence to substantiate the allegations contained in paragraphs 3 to 6 of affidavit dated 9.10.2002, which have also been reiterated in the amended paragraph 8(a) of the original affidavit that his consent was obtained by playing fraud or using undue influence. Therefore, the bald assertion contained in his affidavits cannot be relied for recording a finding that the petitioner was forced to give consent for utilization of his land for construction of the causeway. If there was any grain of truth in the averments contained in the rejoinder affidavit filed by him and in the amended paragraph 8 (a) of the original affidavit, the appellant could reasonably be expected to have lodged a protest or at least represented his grievance to the higher authorities of the government and the Corporation. However, it is neither the pleaded case of the appellant nor the learned counsel could show that his client had represented to the higher authorities by alleging use of

force or coercion by the authorities of Quli Qutub Shah Urban Development Authority or the Municipal Corporation of Hyderabad for the purpose of obtaining his consent or that he was forcibly made to sign certain papers. In our opinion, the petitioner's silence on this important issue militates against the bona fides of his plea that the concerned authorities had obtained his consent by use of fraud and coercion or that he was forced to sign papers and that he had accepted compensation under protest.

The matter deserves to be examined from another angle. The question whether the respondents had played fraud or coerced the petitioner in parting with his property and whether he was forced to give consent for utilization of a portion of his land for construction of the causeway and was compelled to sign blank papers and forms cannot be decided by this Court in exercise of power under Article 226 of the Constitution of India. Such contentious issues can be decided only by an appropriate adjudicatory forum i.e. civil court, on the basis of oral and documentary evidence, which may be produced by the parties.

In view of the above discussion, we do not find any tangible reason to differ with the learned Single Judge that the procedure adopted by the respondents for utilization of the appellant's land for construction of causeway was legal and after having accepted compensation at the rate of Rs.169/-, he cannot seek a direction for payment of the so-called market value at the rate of Rs.2,000/- per square yard.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

September 19, 2007

C.V. NAGARJUNA REDDY, J

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[\[1\]](#) AIR 1962 SC 113
[\[2\]](#) AIR 1995 SC 142
[\[3\]](#) AIR 1997 SC 2625
[\[4\]](#) AIR 1970 AP 262 (FB)
[\[5\]](#) 2001 (2) ALD 662 (F.B.)
[\[6\]](#) AIR 1993 Karnataka 77